SUPREME COURT OF THE UNITED STATES

October Term, 1908.

No. 138.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, EX. REL. THE RAILROAD AND WAREHOUSE COMMISSION.

In Error to the Supreme Court of Minnesota.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

ALBERT E. CLARKE,
Attorney for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

October Term, 1903.

No. 138.

THE MINNEAPOLIS & ST. LOUIS RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE STATE OF MINNESOTA, EX. REL. THE RAILROAD AND WAREHOUSE COMMISSION.

In Error to the Supreme Court of Minnesota.

BRIEF OF PLAINTIFF IN ERROR, IN REPLY.

Brushing aside technicalities in this case, the question presented is this:

Does a judgment, by which a railroad company is required to construct and maintain two stations within one mile, upon the same line of road, to accommodate the *convenience* (not the necessities) of a total population of three hundred and fifty people, in a rural, or agricultural district, constitute a taking of property without due process of law?

Here is the whole question in a nutshell. This is the issue, as stated by the Supreme Court of Minnesota, at 87

Minnesota, page 186. The language of the state court is as follows:

"The Commissioners have the power to order the erection and maintenance of depot buildings *unless it is made to appear that such an order is so unreasonable in its terms as to actually result in depriving the company proceeded against, of its property, without due process of law.*"

This is, of necessity, a federal question.

It seems idle to consume time in discussing questions as to the "burden of proof" where the facts are undisputed.

Discussion as to whether this law is a "police regulation" is equally superfluous. A police regulation, the enforcement of which violates a constitutional enactment, is equally void with any other kind of a regulation. The present station at Norman fully meets all *necessities.* It requires something more than a muddy road or personal inconvenience to justify the state in requiring the maintenance of two stations on the same railroad, seven-tenths of one mile apart.

The power of the state to require the construction and maintenance of stations *at proper points,* is not questioned. We concede it. The power to require an *unnecessary* and wholly useless expenditure of money, in the construction and maintenance of stations where they are not needed, is denied. That is the whole case.

Respectfully submitted,

ALBERT E. CLARKE,
Attorney for Plaintiff in Error.